IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20..12..2007

Coram:

The Hon'ble Mr. Justice K.CHANDRU

W.P. No. 37764 of 2007

and
M.P. No. 1 of 2007

Anusha .. Petitioner

Vs.

Secretary
Tamil Nadu Public Service Commission
Omanthurar Government Estate
Chennai - 2 .. Respondent

Petition filed under Article 226 of the Constitution of India seeking for issuance of writ of Declaration in the light of the appended affidavit, declaring Clause 6(a)(1) of Advertisement No. 120 issued by the respondent without date as being ultra vires Articles 14 and 21 of the Constitution of India and consequently direct the respondents to validate petitioner's candidacy for the Group 1 Services Exam 2006-2007.

For Petitioner : Mr. Selvarangan
For Respondents : Mr. Arul

ORDER

Heard Mr. Selvarangan, learned counsel appearing for the petitioner and Mr. Arul, learned counsel representing the respondents and perused the records.

2. The petitioner challenges paragraph 6(A)(1) of the Advertisement No. 120 issued by the Tamil Nadu Public Service Commission [for short, 'TNPSC'] on the ground that it is violative of Articles 14 and 21 of the Constitution of India. The Advertisement No. 120 issued by the respondent TNPSC called for candidates for various posts for Group I Service. In paragraph 6 (A)(1) of the Notification, it is stated as follows:

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6. QUALIFICATIONS:-
(A) AGE (as on 01.07.2007):
(i) MINIMUM AGE LIMIT - Should have completed 21 years (for all candidates) (i.e. Should have been born on or before 01.07.1986)
(ii) MAXIMUM AGE LIMIT - Should not have completed-
35 years for Scs, Sts, MBCs/DCs, Bcs and Destitute Widows of all castes.

30 years for candidates not belonging to any of the above said categories."

3. According to the petitioner, prescription of minimum age of 21 years is arbitrary as she is only 20 years old and she cannot be denied consideration of employment on the ground of fixation of minimum age limit.

4. In similar writ petition, the fixation of maximum age and giving concession to other communities in granting relaxation from maximum age was upheld by this Court in W.P. No. 36299 of2007 in N. Uma Devi v. The Secretary, Educational Department and another vide order dated 04.12.2007. The basis on which such a restriction was upheld equally applies to the fixation of minimum age limit also.

5. It is essential for the employer to prescribe qualification whenever they seek for candidates for relevant posts. It is not open to the petitioner, who does not have prescribed qualification in terms of the impugned Notification, to come forward to challenge the same.

6. Thereafter, the learned counsel for the petitioner pressed into service the argument of the legitimate expectation. The said argument is misconceived because such a legitimate expectation cannot go against the statutory Rule made by the Government in terms of Article 309 of the Constitution of India. In the decision relating to Ram Pravesh Singh and others v. State of Bihar and others [JT 2006 (12) SC 209], the Supreme Court set out the parameters of the concept of Legitimate Expectation. The following passage found in paragraph 14 may be usefully extracted below:

Para 14: "What is legitimate expectation? Obviously, it is not a legal right. It is an expectation of a benefit, relief or remedy, that may ordinarily flow from a promise or established practice. The term "established practice" refers to a regular, consistent, predictable and certain conduct, process or activity of the decision-making authority. The expectation should be legitimate, that is,

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reasonable, logical and valid. Any expectation which is based on sporadic or casual or random acts, or which is unreasonable, illogical or invalid cannot be a legitimate expectation. Not being a right, it is not enforceable as such. It is a concept fashioned by the courts, for judicial review of administrative action. It is procedural in character based on the requirement of a higher degree of fairness in administrative action, as a consequence of the promise made, or practice established. In short, a person can be said to have a "legitimate expectation" of a particular treatment, if any representation or promise is made by an authority, either expressly or impliedly, or if the regular and consistent past practice of the authority gives room for such expectation in the normal course. As a ground for relief, the efficacy of the doctrine is rather weak as its slot is just above "fairness in action" but far below "promissory estoppel". It may only entitle an expectant: (a) to an opportunity to show cause before the expectation is dashed; or (b) to an explanation as to the cause for denial. In appropriate cases, the courts may grant a direction requiring the authority to follow the promised procedure or established practice. A legitimate expectation, even when made out, does not always entitle the expectant to a relief. Public interest, change in policy, conduct of the expectant or any other valid or bona fide reason given by the decision-maker, may be sufficient to negative the "legitimate expectation".

The doctrine of legitimate expectation based on established practice (as contrasted from legitimate expectation based on a promise), can be invoked only by someone who has dealings or transactions or negotiations with an authority, on which such established practice has a bearing, or by someone who has a recognised legal relationship with the authority. A total stranger unconnected with the authority or a person who had no previous dealings with the authority and who has not entered into any transaction or negotiations with the authority, cannot invoke the doctrine of legitimate expectation, merely on the ground that the authority has a general obligation to act fairly."

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7. In a recent judgment of the Supreme Court reported in 2007 AIR SCW 5989 [Union of India and others v. S. Vinod Kumar and others], it was held that the prescription of qualification is prerogative of an employer and the Court power is very limited. The relevant passage found in paragraphs 10 and 11 read as follows:

Para 10: "It may be true that the cut-off marks at 71 had been fixed for unreserved candidates on the basis that marks obtained by the last candidate, i.e. 240th candidate, calculated at 50% of the 480 candidates, but concededly 56 marks were fixed for Other Backward Classes candidates and 20 marks were fixed for Scheduled Caste and Scheduled Tribe candidates. Only because the cut-off marks at 71 had been fixed on the basis of the aforementioned criteria, the same by itself, in our opinion, would not mean that no cut-off mark had been fixed. The fact that the Railway Administration intended to fix the cut-off mark for the purpose of filling up the vacancies in respect of the general category as also reserved category candidates is evident from the fact that different cut-off marks were fixed for different categories of candidates. We are, therefore, unable to accept the submission of the learned counsel that the cut-off marks fixed was wholly arbitrary so as to offend the principles of equality enshrined under Article 14 of the Constitution of India. The power of the employer to fix the cut-off marks is neither denied nor disputed. If the cut-off mark was fixed on a rational basis, no exception thereto can be taken.

Para 11: .... Once it is held that the appellants had the requisite jurisdiction to fix the cut-off marks, the necessary corollary thereof would be that it could not be directed to lower the same. It is trite that it is for the employer or the expert body to determine the cut-off marks. The court while exercising its power of judicial review would not ordinarily intermeddle therewith. The jurisdiction of the court, in this behalf, is limited. The cut-off marks fixed will depend upon the importance of the subject for the post in question. It is permissible to fix different cut-off marks for different categories of candidates. (See Banking Service Recruitment Board v. V. Ramalingam)

[Emphasis added]

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8. In view of the above, the writ petition fails and stands dismissed. However, there will be no order as to costs. Connected Miscellaneous Petition is closed.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

Secretary
Tamil Nadu Public Service Commission
Omanthurar Government Estate
Chennai - 2

W.P. No. 37764 of 2007

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